

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| CAPITOL RECORDS, <i>et al.</i> , | : | Case No.: 07 Civ. 9931 (WHP) (FM) |
| | : | |
| Plaintiffs, | : | ECF Case |
| | : | |
| v. | : | <u>ELECTRONICALLY FILED</u> |
| | : | |
| MP3TUNES, LLC., <i>et al.</i> , | : | |
| | : | DECLARATION OF PAUL D. |
| Defendants. | : | MONTCLARE IN SUPPORT OF |
| | : | MOTION OF NON-PARTY |
| | : | RECORDING INDUSTRY |
| | : | ASSOCIATION OF AMERICA, INC. |
| | : | FOR LEAVE TO FILE <i>AMICUS</i> |
| | : | <i>CURIAE</i> BRIEF IN SUPPORT OF |
| | : | PLAINTIFFS |
| ----- | X | |

PAUL D. MONTCLARE, declares under penalty of perjury as follows:

1. I am a member of the law firm of Mitchell Silberberg & Knupp LLP, counsel for proposed *amicus curiae*, the RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC. (“RIAA”), in this case, and submit this declaration in support of the motion of the RIAA for leave to file the accompanying proposed *amicus curiae* brief in support of Plaintiffs.

2. Plaintiffs have consented to the filing of the proposed *amicus curiae* brief. To date, Defendants have not yet responded to a request for their consent.

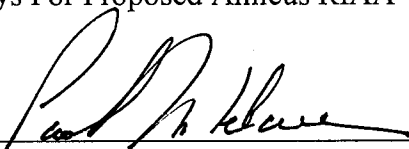
3. RIAA seeks to file the annexed *amicus curiae* brief in support of plaintiffs to respond to and refute the flawed arguments presented to this Court in the recently filed brief of Amicus Curiae Google Inc. In Support of Defendants (“Google’s Brief”) with respect only to the issue of state law protections of the rights of artists and music labels in sound recordings first “fixed” prior to February 15, 1972.

4. RIAA is the trade group that represents the American recording industry. RIAA's record company members create, manufacture, and/or distribute the vast majority of all legitimate sound recordings produced and sold in the United States, including catalogs of valuable sound recordings first "fixed" before February 15, 1972. RIAA protects the intellectual property and First Amendment rights of artists and music labels and monitors and reviews state and federal laws, regulations, and policies. RIAA's members depend for their livelihood on effective protection of their rights in sound recordings, and have been devastated by rampant piracy of music on the Internet. RIAA has filed numerous *amicus curiae* briefs, including in *Capitol Records, Inc. v. Naxos of America, Inc.*, 372 F.3d 471 (2d Cir. 2004)(New York common law protection for sound recordings "fixed" prior to February 15, 1972); *Capitol Records, Inc. v. Naxos of North America, Inc.*, 4 N.Y. 3d 540, 797 N.Y.S. 2d 352 (2005); (same); *Shaab v. Kleindienst*, 345 F. Supp. 589 (D.D.C. 1972) (constitutionality of the Sound Recording Amendment to Copyright Act).

5. For the reasons set forth in its accompanying proposed *amicus curiae* brief RIAA respectfully requests that its motion for leave to file its proposed *amicus curiae* brief in support of Plaintiffs be granted.

DATED: January 13, 2011
New York, New York

MITCHELL SILBERBERG & KNUPP LLP
Attorneys For Proposed Amicus RIAA

By: _____

Paul D. Montclare
12 East 49th Street, 30th Floor
New York, New York 10017
Telephone: (212) 509-3900
Facsimile: (212) 509-7239
E-mail: pdm@msk.com